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The attempt is made to put into perspective the moral, legal, and political issues of school desegregation for the private citizen of the South who is still in search of the moral and social values demanded by the racial problem. Thirty questions are raised and discussed. Some of the topics included were: the Supreme Court rulings and their implications; the "States rights" issue; the civil rights issue; the state of desegregation in schools; the requirements of a good desegregation plan; "token desegregation"; the "solid" South; school desegregation results; "extremist" involvement; the effect of racial issues on United States international relations; and the ways that the individual can help in his community. The court decisions of Brown v. Topeka, Coopera v. Aaron, and James v. Almond, suggestions for further reading, and a map of the counties which had been desegregated by 1960 are also included.

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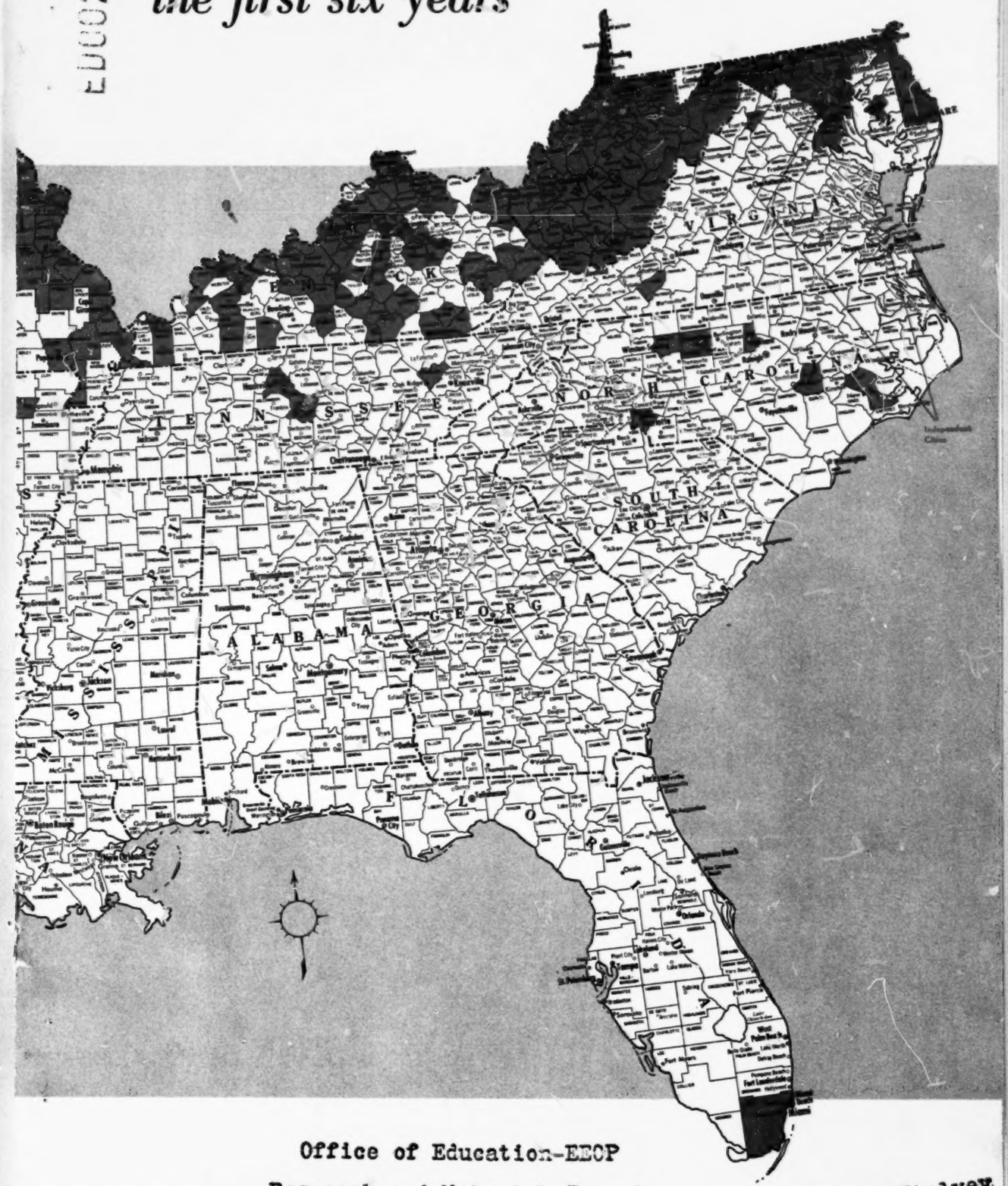

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SOUTHERN REGIONAL COUNCIL
63 Auburn Avenue, N.E.
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Contents

Page

Foreword i

The Questions ii

The Discussions 1

Court Decisions:

Brown v. Topeka, First Decision 24

Brown v. Topeka, Second Decision 26

Cooper v. Aaron (partial text) 27

James v. Almond (partial text) 29

Suggestions for further reading 32

Foreword

In August, 1953, when the South was waiting for the Supreme Court deliberations over the legality of segregated schools, the Southern Regional Council issued *Questions and Answers,* a short pamphlet which set forth, as clearly as we were able to do, the facts confronting the South. In June, 1954, a few weeks after the Court had handed down its historic decision, a revised publication, still in question and answer form, was released. This was called *Answers for Action;* a third version was brought out in July, 1956: *Next Steps In the South.* This present revision has been prepared not only because *Next Steps* is out of print (although that is encouraging, for it indicates that these pamphlets have filled some need in Southerners' reading and thinking), but also because the past four years, of the six that have intervened since the School Segregation Cases were decided, have been the fullest of all in both hopeful and wearying events. These need to be put in perspective for a South still wrestling with itself, in its search for the moral and social values demanded by its aged racial problem.

In one of the earlier editions, we wrote:

> As one noted Southern editor has put it, white and Negro citizens have important business together. The months immediately ahead are a time for sound thinking and planning by the best people of both races. The responsibility for legislative and administrative changes rests with the public officials, state and local, to whom we have entrusted the powers of government. In a deeper sense, however, the decision-makers will be the private citizens who are actively involved in the lives of their communities. That includes, or should include, all of us.

School Desegregation: The First Six Years is written for these thousands of "decision-makers." It is published in the belief that they want, above all, an end to disorder, and a re-invigoration of democracy here in the Southern states.

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The Questions

		Page
1.	What did the Supreme Court rule in *Brown v. Topeka?*	1
2.	Does the Supreme Court's decision represent the "law of the land?"	1
3.	Was the decision in *Brown v. Topeka* a sharp break with the past?	2
4.	What other points of law have been decided since 1955?	3
5.	What about the "states rights" argument against the *School Segregation* decision?	3
6.	What have Congress and the President done to support civil rights?	3
7.	Does desegregation violate the freedom of association?	4
8.	What progress has been made toward desegregation of public schools?	4
9.	What is the prospect for schools not yet desegregated?	5
10.	Are private schools a realistic substitute for public schools?	6
11.	Who loses when the schools are closed to avoid desegregation?	7
12.	How successful have "save our schools" committees been?	9
13.	What are some of the desegregation plans which have been adopted?	9
14.	What is "token desegregation?"	11
15.	What are the requirements of a good desegregation plan?	11
16.	Why do Negroes want desegregated schools?	12
17.	Will desegregation lower academic standards?	13
18.	Are there differences in intelligence between the Caucasian and Negro races?	14
19.	Will Negro teachers lose their jobs when schools are desegregated?	14
20.	Is it reasonable to delay integration because Negroes have a higher crime and disease rate?	14
21.	Will desegregated schools cause juvenile delinquency and school behavior problems to increase?	15
22.	Do desegregated schools lead to interracial marriages?	16
23.	Do recent population trends have a meaning for school integration?	16
24.	What is wrong with school segregation?	18
25.	Did the decision "set back" race relations?	18
26.	Is there a "solid South?"	18
27.	What have church groups said?	19
28.	Who are the "extremists?"	22
29.	How does the racial issue affect the international relations of the United States?	22
30.	What can we do in our communities to help effect harmonious social change?	23

1. What did the Supreme Court rule in *Brown v. Topeka?*

Education, the Court said, is today "perhaps the most important function of state and local governments." The Court then declared that educational *opportunity*, "where the state has undertaken to provide it," is a right which must be offered to all its citizens on equal terms. This being so, the question which the Court had to decide was whether segregation of public school children *solely on the basis of race* was a denial of equal opportunity. The justices ruled that it was. "To separate them [Negro children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." Separate educational facilities are, therefore, "inherently unequal," and a denial of the equal protection of the laws. (See page 24 for the full text of the decision.)

Brown v. Topeka has two parts. The original decision of 1954 stated the law. A second decision on May 31, 1955, dealt with the procedure by which the law was to be carried out. (See page 26 for the full text.) The Supreme Court did not require immediate compliance, even by those school districts party to the original case. It did insist that a "prompt and reasonable start" be made, and that schools be desegregated "with all deliberate speed." It delegated to the judges of the federal district courts (who, in the South, are themselves Southerners) the task of fashioning the specific decrees — the desegregation orders—which localities must obey. The Supreme Court clearly believed that the best approach was reliance upon local school districts to prepare and propose plans. Since 1955, the federal courts have shown a readiness to approve any local plan, as long as it shows good faith in making a start and carrying through desegregation.

2. Does the Supreme Court's decision represent the "law of the land?"

Emphatically, yes. In a governmental system such as ours, there has to be some ultimate authority to declare what the law is, and to interpret the Constitution. This is made doubly necessary by the American conception of individual rights—rights guaranteed to the individual against denial by either the national or state governments.

Early in the history of the republic, the federal courts were acknowledged as this ultimate authority, and as the tribunals which are the final protectors of individual rights. Presidents and Congresses have occasionally chafed under this authority of the courts, and so, sometimes have state governments, of North, South, and West. But the overwhelming consensus of Americans of all generations has affirmed the wisdom of obedience to the courts' interpretations of the Constitution. Thus, Attorney-General Malcolm Seawell of North Carolina, has said:

> . . . whatever our thoughts about the Supreme Court of the United States, its interpretation of the Constitution of the United States becomes the law of the land, and, whatever our personal feelings

about that law may be, the signs at the crossroad where we now stand as a people clearly spell out to us that there can be neither defiance nor evasion of the law of the land.

This does not mean that the Supreme Court cannot be overruled, if its interpretation of the Constitution is rejected by the people. It can be, but only by a higher law, i.e., an amendment to the Constitution. And at least two amendments (the Eleventh and the Sixteenth) were passed to do just that. Part of another—the Fourteenth—was designed to reverse the Supreme Court's famous *Dred Scott* decision of 1856. In its opinion in that case, just before the Civil War, the Constitution was held to prohibit *any* Negro, whether slave or free, from *ever* becoming a citizen of the United States, and to sanction the principle that Negroes "had no rights which the white man was bound to respect." By contrast, the Fourteenth Amendment reads:

> *All* persons born or naturalized in the United States, and subject to the jurisdiction thereof, are *citizens* of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of *citizens* of the United States, nor shall any State deprive any *person* of life, liberty, or property without due process of law, nor deny to any *person* within its jurisdiction the equal protection of the laws.

Challenged by the defiance of Governor Faubus of Arkansas, the Supreme Court has itself restated its right and power to declare what is the "law of the land." That ruling, given on September 29, 1958, is reprinted in part on page 27.

3. Was the decision in *Brown v. Topeka* a sharp break with the past?

This question raises an issue of fact, and should, therefore, be easy to answer. On the contrary, it has been so buried in the muck of editorial flamboyance and campaign oratory, mass-produced for bargain basement distribution, that a reasonable answer to it is almost never heard, even though not hard to find.

The decision *was* a break with the past, but *not* a sharp break. It was new, in the sense that prior to May 17, 1954, segregated public schools were permitted, and after that date they were impermissible under the Constitution. But the change had been clearly coming.

The old "separate, but equal" doctrine is usually traced back to the case of *Plessy v. Ferguson* in 1896 (though the phrase was nowhere used in the decision of that case, which dealt, not with schools, but with intra-state railroads). It is true that the Supreme Court in that old case took for granted the constitutionality of segregated schools; but basically, its decision rested on a finding that segregation did not imply the inferiority of the colored race. As has been noted already, the Supreme Court in 1954 found just the opposite.

Between 1896 and 1954, many cases of civil rights were decided, and the old "separate, but equal" doctrine was always acknowledged. But some other things were true as well. First, in no case at any time prior to 1954 did the Supreme Court have to decide whether segregated public schools were constitutional. Second, from the time of the first World War, the Supreme Court in

many fields—housing, voting, transportation—struck down state and local laws which discriminated against Negroes. Third, in a series of cases dealing with higher education, culminating with the Texas case of *Sweatt v. Painter* in 1950, the Supreme Court had practically concluded that no all-Negro school could be equal to an all-white school. These decisions were well known to those who, since 1954, have loudly accused the Court of rewriting the Constitution.

4. What other points of law have been decided since 1955?

As everyone knows, the courts have been full of school litigation. Some of the many cases have yielded important statements of law, which have become guide-lines for Southern action. The most noteworthy seem to be:

—in several cases coming from Alabama, Arkansas, and North Carolina, pupil placement laws have been upheld in principle; the courts have warned that if these laws, which establish criteria for assigning children to their schools, are administered on racial grounds they will be declared unconstitutional;

—in an Arlington County (Virginia) case, and in Norfolk, it was ruled that applications by Negroes for transfer to a predominantly white school must be acted on according to the normal regulations governing transfers and cannot be subjected to extraordinary tests;

—in the Nashville case, a system of gradual desegregation over twelve years, beginning with the first grade and based on geographic assignment of pupils, was approved;

—in the Norfolk case, it was held that a state may not close some public schools solely to prevent segregation, and keep open others throughout the state (see page 29 for partial text);

—the Supreme Court ruled in the Little Rock case that the constitutional rights of a Negro child cannot be set aside because of violence or disorder (see page 27 for partial text).

5. What about the "states' rights" argument against the *School Segregation* decision?

There is much that could be said on this question. It is sufficient here to remember that the states do not have the "right" to deny the constitutional rights of individual Americans; they have no "right" to discriminate unfairly against some of their residents. As a matter of fact, the Supreme Court may be said to have recognized "states' rights" when it invited the state and local governments to devise their own desegregation procedures, instead of imposing a national plan. Education has traditionally been regarded as primarily a state and local responsibility. The Supreme Court has not changed that; it has only required that the schools be operated without discrimination, in accord with the principles of the Constitution.

6. What have Congress and the President done to support civil rights?

In 1957, Congress passed the first civil rights legislation in over 80 years.

One of the Act's primary purposes was to extend federal protection of voting rights; largely because of obstruction by the state governments and officials of Alabama, Louisiana, and Mississippi, and an adverse judicial ruling in Georgia, this aim of the Act has not yet been realized. The other main provision of the Act was the establishment of the Commission on Civil Rights to study present conditions and make recommendations to Congress and the executive department for strengthening our rights. The Commission limited its study to three fields: education, housing, and voting. In September 1959, it issued its report. The Commission will continue its work until 1961, and has broadened its studies into other areas, such as employment and law enforcement.

In 1960, Congress enacted further provisions to guard voting rights. The Act of 1960 also tightens up the law against bombing and dynamiting of property; authorizes direct federal educational programs for children of military personnel if their public schools are closed; and makes more firm the authority of federal judges to prevent interference with their orders from any source.

By his dispatch of troops to Little Rock in 1957-58, the President made clear that he, as chief executive, accepted the full obligation of enforcing the law of the land. The Executive branch has also for some years maintained committees to guard against job discrimination in the civil service or by government contractors; although the enforcement powers of these committees are weak they have been helpful in decreasing discrimination. The most spectacular change of all has been the integration of personnel in the armed services, begun during the Korean fighting and now virtually completed.

7. Does desegregation violate the freedom of association?

In a democracy, the freedom of association is a valued civil liberty. The desegregation of public schools will not jeopardize it. Public schools are not private clubs. They are institutions intended to educate youngsters in the use of basic tools of learning, to teach them in a systematic manner some of the products of scholarly research, and to acquaint them with the values of their civilization. The schools are public property, operated for the benefit of all citizens. A parent has the right to send his children, or to enroll them in private schools. But no parent has a right to dictate which other children will attend public school with his, or a right to demand that his state compel children to keep apart from each other in the schools.

8. What progress has been made toward desegregation of public schools?

In May, 1954, seventeen states and the District of Columbia required racial separation in their public schools. By September, 1959, the schools of only five Deep South states were completely segregated.

In the District of Columbia and in the states of Delaware, Kentucky, Maryland, Missouri, Oklahoma, and West Virginia, there are now only scattered localities where segregation is still the rule. There is no clear record of how many white

and Negro children are actually at school together. But in the large cities—Baltimore, St. Louis, Washington, Louisville, Wilmington, Tulsa, and others—and through the border region generally, there must be some number between one-half and three-quarters of a million students in integrated schools; perhaps 2,000,000 public school students of the border states live in districts which have ceased to require segregation.

Farther South, desegregation has been much more "deliberate" than it has been "with speed." Desegregation is a deep historical change, and like all historic movements cannot be made to fit neatly into tables of figures. There is, as a matter of fact, something distasteful about the attempt to "keep score" or ventures after new forms of personal relationships. As long, however, as desegregation remains an issue of public controversy and politics, statistics will probably be needed to show what ground has been covered, and what lies ahead. In the states of the old Confederacy, desegregation began nowhere before 1956; its pace since is best measured by a glance at figures:

STATE	Desegregated Bi-Racial Districts				Negroes in Desegregated Schools			
	1956-57	1957-58	1958-59	1959-60	1956-57	1957-58	1958-59	1959-60
Arkansas	4 of 228	7 of 228	6 of 228	8 of 228	34	91	73	94
Florida	0	0	0	1 of 67	0	0	0	512 c
No. Carolina	0	3 of 172	4 of 172	7 of 174	0	11	14	34
Tennessee	1 of 141 a	2 of 141 a	3 of 142	4 of 142	6 a	19 a	82	169
Texas b	103 of 841	123 of 841	125 of 722	127 of 720	3,400	3,600	3,250	3,300
Virginia	0	0	3 of 128	6 of 128	0	0	30	103
TOTAL	108 of 1,210 a	135 of 1,382 a	141 of 1,392	153 of 1,459	3,440 a	3,721 a	3,449	4,212

Above data derived from statistics of Southern Educating Reporting Service.

a—plus Oak Ridge.

b—almost all desegregation has been in west Texas. The Texas figures are estimates throughout; the decrease shown for 1958-59 means nothing more than that a better estimate was made.

c—not a mark of tremendous progress, but a revelation that only a handful of whites stayed, with 490 Negroes, in the Orchard Villa school near Miami.

In Alabama, Georgia, Louisiana, Mississippi, and South Carolina there has as yet been no desegregation at all. In each state except Alabama and Mississippi there is a court suit in some stage of adjudication. A suit brought in Birmingham was dismissed on the narrow ground that the Alabama placement law was not unconstitutional "on its face."

This is an appropriate place to mention the extent of desegregation in higher education. Negroes are now attending formerly segregated, publicly financed colleges and universities in all but four Southern states: these are Alabama, Georgia, Mississippi, and South Carolina. Between 1935 and 1959, 124 of 195 formerly all-white tax-supported colleges and junior colleges in the Southern and border states and the District of Columbia had enrolled Negroes or adopted non-discriminatory policies; nearly 100 of these had desegregated after the 1954 decision.

9. What is the prospect for schools not yet desegregated?

If there are Negro children living within the attendance area, there is the

likelihood that, sooner or later, some will petition to be enrolled at the "white" school. If the application is refused, the federal courts are open for suit. If the real reason for the refusal can be shown to have been race, the courts will order admission. If the community presents a plan for orderly desegregation, it will probably be approved by the court; if no plan, or an evasive one, is presented, the court itself will act as school board. If there are state laws prohibiting desegregation, they will be overruled.

10. Are private schools a realistic substitute for public schools?

The unreasoned enthusiasm for private schools as a means of avoiding desegregation has been sobered by a spreading awareness that private schools must be *truly* private if they are to be allowed to practice racial discrimination in admitting students. If they are dependent on the state—legally, financially, or administratively—they will be subject, just as are the public schools, to the Supreme Court's ruling. It has also become more clearly understood that private schools face educational and financial problems which make dubious their ability to operate as large-scale replacements for a public system.

There are still two private school plans in the process of testing. Both are in Virginia. The first is an approach devised by state law. Any child choosing for any reason to attend any nonsectarian private school may draw up to $250 annually from public funds for tuition. These tuition grants have made possible the newly organized private schools now open in Charlottesville, Norfolk, and Warren County. But the second Virginia approach does not employ tuition grants at all, for fear that they may make a private school vulnerable to a desegregation suit. In Prince Edward County, all public schools were closed in September, 1959, and the county levied no taxes for education. This meant a 53% reduction in local taxes, and because of this savings citizens are expected to be able and willing to support the private school which since September has been serving the county's white children. The Fourteenth Amendment, however, says that no *state* shall deny the equal protection of its laws. The state of Virginia is providing public schools for its children in every locality except this one county; the courts may in time have to decide whether this amounts to discrimination against the children—white and Negro—of Prince Edward.

In other places of the South there have been experiments in private education as a means of preserving segregation. These have occurred in Selma and Dallas County, Alabama; Little Rock; Union County, Kentucky; Nashville; and Arlington County, Virginia. All were unsuccessful, all have gone out of business.

The two Virginia approaches now being followed seem, therefore, to show the liveliest chance of actually working. But the road is hard, even assuming the federal courts allow it to be followed. This the Council tried to make known by publishing in the Summer of 1959 a pamphlet by two specialists in school administration.* With facts instead of guesswork, the two educators showed

**If the Schools Are Closed . . . A Critical Analysis of the Private School Plan*, by Donald Ross Green and Warren E. Gauerke.

that a system of private schools would require a doubled and possibly tripled cost per pupil, if present educational standards were even to be approximately equaled.

Private schools have long contributed meritoriously to American education, and will certainly continue to do so. They have, except for the Catholic parochial schools, served almost entirely the few, well-to-do families interested in paying for special features. This is a far cry from being a vehicle to the American goal of universal education. Private schools throughout the South are, according to a recent survey by *Southern School News*, growing in enrollment. But the reasons given, in state after state, reflect the specialized functions of private education. The increased enrollment is attributed to parental concern about college preparation in the public schools; to crowded conditions in the public schools; to the migration of Catholics from the North due to Southern industrialization; and, most of all, to widespread prosperity. One other reason was frequently cited: the fear of school closing by state laws. It is not a pleasant thing to record, that fear of state law is causing some citizens to desert the public schools; it is doubly unpleasant when we remember that only the well-to-do have this escape. In this connection, a survey in December, 1959 showed that the "vast majority" of the 532 children of northern Virginia who had accepted tuition grants were already attending private schools.

11. Who loses when the schools are closed to avoid desegregation?

Everyone.

The students are victimized

From a statement by Arthur S. Flemming, Secretary of Health, Education and Welfare, June 22, 1959:

> Virginia public schools provide 180 days of instruction during the school year and Arkansas public schools 178. The closing of the 13 schools represented a loss of about 1,800,000 pupil-days in the two States. This figure could be increased by about 90,000 pupil-days because some 1,050 students in Warren County did not attend their high school after it reopened in February. We know that as far as many of the children and young people are concerned, these are not only lost days from a statistical point of view but they are also lost days which will be difficult for them to recapture from the point of view of their intellectual growth and development.
>
> Approximately 14,500 of the 16,300 students affected by the shutdowns were exposed to schooling of one kind or another during the year. We know that because of the lack of educational facilities the instruction, in most instances, was inadequate when judged against what we now think of as reasonable standards. Time alone will make it possible to appraise the results of the instruction that these students received. It is clear, however, that from the standpoint of the development of the individual it doesn't make sense to resort to makeshift arrangements when adequate facilities, equipment, and libraries are available.
>
> About 1,800 of the 16,300 students received no education at all during the school year. For them it has clearly been a lost year for intellectual growth and development.

The teachers are hurt

In May 1959 after Little Rock's high schools had been closed for a year, Southern School News *reported:*

> Superintendent Terrell E. Powell said it looked like 176 of Little Rock's normal 828 teachers would not return for the 1959-60 school year. Of these, 98 were going to resign, 56 probably would resign, 14 were retiring and eight were taking leaves of absence. The figures were obtained in a poll by school officials to determine teacher intentions.
>
> A few weeks later Powell reported on the number of applications for teaching jobs and said there were about a third as many as usual. There had been 63 applications by May 21. At that rate, he said, it was going to be a problem to get enough teachers for all 36 schools.

In August, Everett Tucker, President of the Little Rock Schoo! Board, was asked in a television program what closure had done to the school system; he replied:

> I think the most important effect . . . was the loss of teachers. There is no question but what we lost a number of dedicated teachers just because of the uncertainty there, . . . although they didn't always give that as a reason for resigning.

Community morale and culture suffer

From an address by Governor Almond of Virginia, June 1959:

> We must not allow the welfare of our children and the future of our state to be victimized by the bitterness of disappointment, the pang of frustration, the demon of hate, and threat of political purge, appeal to base passions and prejudices, and the stirring of emotions productive of violence and disorder.
>
> * * *
>
> No error could be more grave, no mistake more costly, no travesty more tragic, no curse more productive of woe, than to succumb to the blandishments of those who would have Virginia abandon public education and thereby consign a generation of children to the darkness of illiteracy, the pits of indolence and dependency, and the dungeons of delinquency.

The nation loses

From a statement of 250 faculty members of Emory University:

> We cannot afford the folly of a weakened educational system, and we can even less afford no education at all. To close the public schools in any city, county, state, or region of America at this critical stage of world history is to play directly into the hands of communism.

The economy is damaged

From an address by W. H. Nicholls, president of the Southern Economic Association and chairman of Vanderbilt's Department of Economics:

> If Southern political leadership allows the closing of its hard-won and priceless public-school systems, the breakdown of law and order and freedom of discussion, the continued virtual disenfranchisement of its more moderate and liberal urban sector, and the destruction of its rising state universities, Southern economic development for whites and Negroes alike can easily be set back by half a century. As the contrasting experiences of North Carolina and Arkansas make painfully clear, the directions set by state leadership are of paramount importance.

12. How successful have "save our schools" committees been?

The best way to answer this question would be to try to imagine what the years 1958 and 1959 would have been like without such committees in Virginia and in Little Rock. Had citizens not organized to defend their schools, there would have been

—no effective public opinion voiced in protest of school closings;

—no organization of voters in crucial elections and referenda;

—no adequate funds for necessary court suits.

One of the heartening results of the "save our schools" movement is its continuance *after* the immediate crisis has passed. In Little Rock, the Women's Emergency Committee to Open Our Schools did brilliant work from September, 1958 until the schools were reopened in August, 1959; it has stayed in existence (as the Women's Emergency Committee for Public Schools) to guard the ground won. The movement began in Virginia in the threatened localities of Arlington, Charlottesville, and Norfolk, led to the formation of the Virginia Committee for Public Schools, and then spread to other cities, towns, and counties where citizens organized in quiet resolve that "it would not happen here;" the Virginia Committee and its local affiliates continue as a force in the educational and political life of the state.

Another committee came into being in Georgia, in December, 1958, when Help Our Public Education (HOPE) was formed—the first citizens' group to appear before a court had ordered desegregation. From Atlanta, HOPE has spread to other parts of the state where local chapters have been established.

In early 1960, a series of hearings was held throughout Georgia before a commission created by statute to ascertain public sentiment on the school desegregation issue. In every district of the state, the commission heard people speak out for open schools. In at least half the districts, the hearings showed strong public opinion in favor of desegregation in compliance with court orders over closed schools. This response, in a Deep South state whose people had been represented as unanimous in their commitment to segregation, was a remarkable tribute to the role of HOPE as a catalyst of public expression.

Some of the history of the "save our schools" movement has already been written; see "For Further Reading," page 32 of this pamphlet.

13. What are some of the desegregation plans which have been adopted?

By now, a great variety of desegregation plans have been developed by the localities which have complied with the Supreme Court's decision. Some of these have been "all at once" plans; some have been gradual approaches. Some of them place responsibility for initiating desegregation on the school administration; some of them require the students and their parents to take the initiative.

All of the plans described below come from larger cities. Small communities in the border states and in Texas have

devised many different individual plans to suit their own community situations. That they have been able to do so is evidence of the great flexibility of the Supreme Court's decision. For descriptions of these small locality plans, plus full discussion of the whole question, see Wey and Corey, *Action Patterns in School Desegregation* (published by Phi Delta Kappa, Bloomington, Ind.)

The Louisville plan

The city was re-districted in 1956 without regard to race, and students are assigned to the nearest school. In practice, parents are free to transfer their children from the assigned school to another, unless the desired school is full. Desegregation in Louisville was preceded by months of public discussion led by school officials, and by integration of teacher's meetings. In 1959, Louisville began the integration of faculties.

The Nashville plan

Nashville began desegregation in 1957, by assigning all first-grade pupils on the basis of geographic zones without regard to race. Each subsequent first-grade has been likewise assigned, so that as of 1959 desegregation has reached the third grade of the twelve-year staircase. A child whose race is a minority in his school or grade, or who has been assigned to a school which had previously served only the other race, may transfer on request.

The Baltimore plan

Historically, Baltimore has had no school districts: students have been free to attend any school in the city, and no assignments are made except in instances of over-crowding. Prior to 1954, there was one other exception to free choice: race. Baltimore's desegregation plan was, then, the most simple possible. The racial designation of schools was ended, and free choice prevails. Students desiring to transfer from one school to another must, however, get the permission of the two principals involved, in order to prevent mass movement. Teachers are assigned on the basis of demonstrated ability.

The Washington plan

Prior to 1954, Washington had not only segregated schools, but two separate school systems united only by a common superintendent. The separate administrations were ended, the city re-districted, and students are assigned without regard to race to the nearest school. Desegregation motivated Washington to undertake an educational reform which many had believed long overdue. A so-called "four track" curriculum was adopted, and every student from the tenth grade up is assigned to one of the four curricula on the basis of ability and achievement. In 1959, a similar track system was extended to the lower grades. Teachers are assigned on the basis of demonstrated ability. (The St. Louis plan is similar, except that it began desegregation one semester earlier in the high schools than in the lower grades.)

The San Antonio plan

In 1955, the 1st and 2nd, the 7th, and the 10th grades were desegregated. Negro students entering these grades could choose which school within their residential district to attend. The practice of free choice has been continued with each class entering the elementary, junior high, or high school level.

Individual assignment plans, described next, differ fundamentally from the above methods in that the responsibility for initiating and planning desegregation is not assumed by the school officials.

* * *

North Carolina and Virginia plans

Desegregation has been effected in some localities of each state by the individual assignment of Negro students to formerly all-white schools; such assignments are made only of pupils who meet academic and sociological criteria of the school authorities. The initiative for desegregation is, then, not assumed by the school boards, which act only on the petition of Negro children and their parents.

Little Rock and Atlanta plans

In Little Rock, pupil placement is combined with a top-down stair-step plan: desegregation has begun in the high schools; after a period of adjustment there, the junior highs and elementary schools will, in turn, be desegregated. The Atlanta plan, which has not yet gone into effect, combines pupil placement with the reverse of Nashville's procedure: desegregation is to begin with the 12th grade, and move down one grade a year.

14. What is "token desegregation?"

"Token desegregation" means the admission of just enough Negroes to predominantly white schools to get by the law; "just enough" can be few, indeed. In Charlotte, to take the extreme case, three Negroes were in desegregated schools in 1957-58, four in 1958-59, and exactly one in 1959-60. With such results, it is not strange that some segregationists are now willing to accept legal compliance, in the expectation that desegregation can be made so harsh an experience for Negro children and parents that the incentive to apply for transfers will be deadened.

There is, of course, a counter-offensive to this strategy. It is for Negro children to apply for transfers in such overwhelming numbers that a sizable group will have to be admitted. A beginning in this direction was made in Durham in September, 1959, when 206 petitions were simultaneously delivered to the school board. That only seven were accepted does not erase the potential effectiveness of this method of attack on "token desegregation."

Because the Southern Regional Council believes that "token desegregation" will induce racial friction and festering irritations, it said in a policy statement of December, 1959: "When placement is not guided by professional concern and criteria, but is designed to perpetuate racial separation, its use will only prolong the South's unrest."

15. What are the requirements of a good desegregation plan?

Although the methods for desegregating and administering a school system should be left to professional educators, there are some principles of common sense which any plan ought to observe.

In the first place, the initiative for desegregation should rest with school officials, and not with the Negro child and parents. The school administrators are responsible for the soundness of the educational system. To thrust upon the

Negro parent and child the psychological and social burden of starting the desegregation process is unjust, inhumane—and irresponsible. It is the professional educators who, if left free of political control, can intelligently decide where desegregation should begin, how differences in achievement and ability can best be accommodated and overcome, and what is most advantageous for the individual child.

Moreover, no plan is good which treats children as if they were things, and not sensitive personalities. To place one or two children in a school with scores or hundreds of children of the other race, and to do so with the deliberate intent to purchase thereby continued segregation of all other children, is an act of punishment. It converts children into objects of curiosity, and occasionally of persecution; it makes of them scapegoats for the failure of laws and political policies.

Another common-sense principle is, that a plan should be geared to ending abnormal conditions as rapidly as possible. Token desegregation means continually disturbed school conditions, for the white students as well as the Negroes.

And finally, a good plan is one which is conducive to community peace. No plan can either wholly cause or wholly prevent violence and disorder. There are, nevertheless, some features which experience has shown to invite trouble. For example, as one prominent official has been quoted as saying, "no one hits a six year old." The implication of this is that those school systems which begin desegregation at the senior high school level, do so at the very place where violent reaction is most likely. Likewise, prudent planning will provide a safety valve, perhaps in the form of relatively free transfer-out privileges, for those parents who are too passionate to tolerate any desegregated education for their children.

16. Why do Negroes want desegregated schools?

For two reasons chiefly: because they have learned through bitter years that separate schools almost never are in fact equal; and because they know, as does every candid white person, that segregation does, and is intended to, hang a badge of inferiority on the Negroes which accompanies them in all social relationships.

In October, 1954, a large group of prominent Negro educators met at Hot Springs, Arkansas, and there adopted a statement which one of them described as an "invitation to sober and intelligent cooperation in working out this admittedly difficult problem." Some passages of it have never been excelled for their definition of Negro purposes and beliefs:

> The Supreme Court's decision is a part of an evolutionary process which has been going on in the South and in the Nation for a long time. The decision was not a sudden leap out of the American tradition. It was the right and moral thing to do. Moreover, it was a next logical and inevitable step in the context of our democratic development.
>
> * * *
>
> We take pride in the fact that every individual and organizational effort we have made to achieve complete citizenship rights in American life has

been within the legal framework of the Federal Constitution. The preamble of the Constitution and the ideals and principles of Negro citizenship have been identical. We have never had to apologize for unwillingness or inability to adopt or support its principles.

* * *

The Court's decision makes possible a single school system with the opportunity for the people in the region to marshal their educational resources and to develop a philosophy that brings to education generally a new perspective, and to the nation a new spirit. This cannot be done in a dual system of education. Let it be clearly understood that we are not pleading for Negroes alone. We are concerned about the best education that can be made available to every child in the South.

* * *

Time will prove that our fears have no foundation in fact just as has been proved by the implementation of previous Court decisions. Segregation breeds fear; and when the barriers of segregation are at last removed from American life, we will wonder why we feared at all.

17. Will desegregation lower academic standards?

Providing an education for students of varying abilities and backgrounds is an old problem. Negro performance, on the average, is below that of whites. The Negroes' segregated and often inferior facilities, and their limited cultural experiences, are largely responsible for this lag in academic achievement. Even so, a well-planned instructional program and competent, forceful teaching can close this gap without lowering academic standards.

The fear that desegregation will lower academic standards or create insurmountable problems is not consistent with evidence provided by the studies of areas in which desegregation has occurred. Former Superintendent John H. Fischer, of the Baltimore public schools, declared in an interview: "Legal action in no way alters a child's special talents or his general intelligence. We have no evidence that any of our bright children is doing less well since 1954 than he did before the Supreme Court decision." In a conference sponsored by the Commission on Civil Rights, school men agreed that most Negro children now do less well in school than whites. However, none thought that desegregation had weakened the scholastic standards of his school system.

In some instances, academic standards have been raised. A study issued by Phi Delta Kappa, the professional fraternity of educators, found that several St. Louis teachers reported standards raised instead of lowered, and this usually resulted from the strong desire of Negro children to overcome their handicaps. There was also a trend on the part of white children to work even harder when they discovered that some Negroes were their equal and in some cases their superior. The report states further that "analysis of information collected reveals that desegregation actually strengthened the instructional program in many schools by focusing attention on weak spots that already existed or were being ignored before desegregation became an issue."

18. Are there differences in intelligence between the Caucasian and Negro races?

Scientists are virtually unanimous that race has no relationship to innate intelligence. Whenever it has been possible to take into account all differences in environmental influences and opportunities, the results of intelligence testing have shown essential similarity in mental capacity among all human groups.

19. Will Negro teachers lose their jobs when schools are desegregated?

Some displacement of Negro teachers has occurred in desegregated school systems, and there have been indications that the hiring of new Negro teachers has been slowed. No extensive discharge, however, has taken place, and there is no conclusive evidence that any discharges or failures to appoint have been on racial grounds.

Even in a framework of legal desegregation, many Negro schools will continue to serve Negro pupils. Their faculties will probably continue to be Negro. Furthermore, it is difficult to see how white replacements could be found for all of the 70,000-odd Negro teachers now employed in the Southern and border states, for the shortage of teachers is an ever-increasing national problem. Also, tenure laws protect Negro teachers from discharge in some Southern states, even though tenure rules have been seriously weakened since 1954 by a few legislatures.

The white South may show a surprising capacity to accept Negro teachers, for its children have traditionally been entrusted to the care of Negroes. Substituting a qualified teacher for a trusted —if little educated—servant is hardly a revolutionary step.

Finally, faculty desegregation has proved painless in many localities, and pupil desegregation, where it has been treated as an educational task and not a political issue, has been achieved with unexpected ease. Both factors may encourage school administrators toward maximum use of Negro teachers.

20. Is it reasonable to delay integration because Negroes have a high crime and disease rate?

This objection disregards the whole point of the Supreme Court's decision; that is, Negro school children have the right to be treated as individuals instead of being set apart because of the accident of skin color. The unfairness of the group-achievement approach can be illustrated in many ways. For example, white Southerners *as a group* have a higher rate of crime and disease than whites elsewhere. Yet who would suggest that all Southerners should be segregated from their fellow Americans?

Once the blinders of prejudice are removed, the following points are clear:

(a) Crime and disease are largely caused by environment; race is not a factor. Slums and poverty breed germs and immorality without partiality as to race.

(b) The Supreme Court did not say that every Negro child must be admitted to any school he chooses. It said that a Negro child could not be excluded from a school solely because of his race. Every modern school requires a medical examination before enrolling a pupil; no child with an infectious disease,

white or Negro, is or should be enrolled. Children who are diseased, academically retarded, or prone to criminal behavior can be set apart by a school system which wants to do so, provided that race is not the measure.

21. Will desegregated schools cause juvenile delinquency and school behavior problems to increase?

Desegregation may intensify discipline problems, but that is different from increasing juvenile delinquency. The District of Columbia Department of Public Welfare has announced that delinquency among Negro children in Washington declined sharply from 1954 to 1958. The rate fell from 37.1 per 1,000 children to 21.2. Delinquency among white children remained relatively stable, at 15.3 per 1,000 in 1954 and 15.2 in 1958.

How behavioral problems have been affected by desegregation in some localities is shown in the following excerpts from the report of the Commission on Civil Rights:

> Dr. Omer Carmichael, the Louisville Superintendent, stated that in his desegregated schools there had been somewhat greater difficulty in matters of discipline, due more to the emotional reaction to desegregation than anything else, but that it had been substantially less than he had feared.
>
> In the Baltimore schools, Dr. John H. Fischer, the Superintendent, has found no problems attributable to race as such. In a statement submitted to the Commission, he said:
>
> > . . . no Negro child has ever brought into any of our schools a problem that had not already been presented somewhere by a white child. Nor has any white child been able to claim much originality for his race in inventing new forms of misbehavior. We find that these are a function of the child's total life-situation and are always due to a number of factors. It is never possible to explain a child's behavior simply in terms of his race, or to classify children's problems on a racial basis.

Dr. Hansen, Superintendent of the Washington schools, reports very little increase in difficulties attributable to integration exclusively, and that, in fact, the incidence of severe problem cases appears to be subsiding.

A principal of a desegregated junior high school in Oklahoma City stated that the Negro children did present different problems of discipline but that they were not due to the fact that they were Negroes but to various factors of deprivation. He did not believe that the problems were greater than they had been before the schools were desegregated.

Concerning certain other aspects of the desegregation process, the Superintendent of Schools in Logan County, Ky., Mr. R. B. Piper, stated:

> Integration has many problems in day-to-day school life. Rest room problems, cafeteria problems, and playground problems of a minor nature occur. We attempt to handle these problems as if only one race were involved, and to settle them firmly and promptly. Integrated transportation has its special problems; seating must be carefully arranged with consideration of age and sex. The overcrowded school bus will cause more trouble than an overcrowded classroom.

The school, an institution whose purpose is to promote the maximum growth of the child, can do a great deal toward reducing and even preventing juvenile delinquency. Desegregated schools can provide the kind of climate in which moral development and the learning of community principles of good behavior can occur.

22. Do desegregated schools lead to interracial marriages?

The idea that desegregation leads to an increase in interracial marriage is demonstrably false. Interracial marriage in the Northern states where it is legal, and where the schools have never been segregated by race, is unusual, and the percentage is so small as to be practically negligible. The fear of intermarriage is largely irrational, since there can never be a law or a court decision forcing persons to marry against their will. Marriage is and will remain a matter of personal choice.

23. Do recent population trends have a meaning for school integration?

Most certainly they do. Some of the principal trends and their implications for the schools are:

The movement of people to the cities. Both whites and Negroes are moving, and leaving behind them in the country a more and more costly problem of providing duplicate school facilities. When the rural migrants settle in Southern cities, they begin the process of entering into changed and more tolerant patterns of racial relations; but, for a period, they bring the tempers of the rural South into the cities: Negro migrants may be less ready to press for desegregation, and white migrants may be more reluctant than the already urbanized whites to accept it.

The movement of people within the cities: All over the country, the same thing has been happening: the wealth of the city has moved to the suburbs, and the inner city is inhabited largely by the less well-to-do and the poor people, both white and colored. Segregationists like to say that desegregation is the cause of this, and they always cite Washington as their example, for the District's population is now more than half Negro. But the truth is that in Washington, as elsewhere, the movement to the suburbs began long before 1954 and has not accelerated since. There has been no desegregation in Atlanta or in Richmond, but in the former, Negro school enrollment has climbed steadily until now it is 42% of total enrollment and is expected to reach 50% in the early sixties; and in the Virginia capital, Negro enrollment has moved from 42% of the total in 1953-54 to 54% in 1959-60.

Predictions that masses of whites will flee school districts in the wake of desegregation are perhaps typified by the majority report of the House subcommittee (the Davis committee) which in 1956 investigated the Washington, D. C. schools. The sub-committee deplored the preponderance of Negro pupils in Washington schools, asserting that "just a few years ago" 59,582 white students and 33,498 Negroes were enrolled. It was later

discovered, from enrollment records, that "just a few years ago" was November 1, 1935, and that the date marked an all-time high in white enrollment in the District schools. In fact, the change in racial composition in Washington began some 20 years before the Supreme Court's decision, and a similar change is taking place in cities North and South, including some which have never had school segregation and some which still have it.

The "flight to the suburbs" is a national trend and has been going on for several decades.* Population specialists characterize it as "centrifugal growth" or "rurbanization," and even laymen speak familiarly of the new "suburbias" and "exurbias." The suburban movement is confined largely to the white population; it has been accompanied by another trend, an influx of rural, low-income persons into the downtown "central city" areas. Birth rates are particularly high among the non-white rural immigrants to the city. Negro school enrollments in the cities are, as a consequence, rapidly growing.

There have been conspicuous growths, for example, in the Negro populations of Atlanta, Charleston, and Nashville (and the increases are heavily weighted at the elementary school ages). Yet only one of these three cities has a desegregated school system.

These population shifts within the metropolitan areas have obvious importance for school desegregation. Negro education is becoming more and more an urban, and less and less a rural, task, and this may mean a more favorable cultural and political climate for desegregation. On the other hand the concentration of low income families, both Negro and white, in the inner city may mean that the schools most affected by desegregation are those in which neighborhood opinion is divided and ineffectively led.

The movement of people from and to the South. Southerners going North, Northerners coming South—and in great hordes both ways. The migrating Southerners are white and Negro, and in about equal numbers. Insofar as Negroes leave the South, the dimensions of the desegregation endeavor are, especially in rural areas, reduced; but as they settle and become voters in the North and West, the political pressures for civil rights increase. Insofar as the migration of Southerners includes — as it now alarmingly does—many of our best educated and most talented youngsters of both races, the South's reservoir of responsible leadership is drained at a crucial time. The incoming Northerners tend to be industrial and commercial workers and executives who settle in the cities, and almost all are white. Although they may, and usually do, keep their own counsel on racial issues, they certainly have no deep feelings of attachment to "Southern traditions," and they constitute a firm demand for public schools and law compliance.

*Between April, 1950 and April, 1959, central cities in the United States increased their populations by only 1½%, while the suburbs gained 44%, according to the U. S. Census Bureau.

24. What is wrong with school segregation?

Segregation is illegal, if compulsory in institutions supported by state or local governments.

Segregation has invariably bred inequalities; Negro schools have always been inferior.

Segregation has handicapped Negro children by fastening on them the psychological and emotional burden of an inferior caste, and by frustrating the normal development of their talents and ambitions.

Segregation has handicapped white children by putting their values into corrosive conflict; segregation is impossible to square with the religious and democratic ideals taught them in church and school.

Segregation has meant an economically costly underdevelopment of talents and skills of Negro youth.

Segregation has weakened the international prestige of the United States, and badly compromised its claim to leadership of the free peoples of the world.

25. Did the decision "set back" race relations?

1954 did, of course, mark the end of an old pattern of race relations. For those people who defended that old system, the turning point of 1954 was a "set back." But these are the people to whom "good" race relations consisted of graciously interpreting to the Negroes their role in the South, with the expectation that they would accommodate their behavior to this inferior status.

To all white persons who have had the courage to open their eyes, the events of recent years are proof that the old pattern did not work. The present uproar and clamor, tension and anxiety, are more indicative of progress than the old deep silence. For issues are out in the open, and new patterns of race relations are being formed which are acceptable not merely to the white South, but can be mutually agreeable to white and Negro Southerners alike.

26. Is there a "solid South?"

No. Contrary to popular belief, the South is not all of a piece, even in racial attitudes. In geography, in economy, in history, in tradition—even in speech—there are various "souths." In some parts of the region the two races have grown into new, more democratic relationships comparatively quickly and easily. In other parts, the old ways persist for a long time after law and custom have changed elsewhere in the South.

The great arc which spans from southeastern Virginia to eastern Texas has come to be known as the "Black Belt." There, slavery and plantation agriculture left their heaviest stamp on racial attitudes and practices. And there, as might be expected, resistance to changes in racial patterns is greatest.

Above the Black Belt, the narrower strip of Piedmont counties has a smaller proportion of Negroes, more cities, and most of the industry in the region. There, more flexible notions of race relations prevail. Beyond these low hills lie the mountains—the Appalachians and the Ozarks—where scores of counties have less than 5% Negro population. There, a century ago, an independent people looked with disfavor on

the slave economy and secessionist views of the lowland South.

The density of Negro population is no absolute yarkstick of racial attitudes. Many other factors are important: urbanization, the quality of local leadership, economic and political arrangements, and the mixture of memory and habit which gives a community its unique traditions. But the Negro-white ratio is the best single index to the adjustment, psychological as well as practical, required by the Supreme Court's decision. As Southerners nurtured on legend and folklore, we can benefit from a clear-sighted view of the South as a region of great and growing diversity. It is particularly useful to recognize that almost half of the counties in the South have 10% or less Negro population; that not more than one-fifth of Southern counties have 40% or more.

There never was, in fact, a "solid South." The term has been used mainly by the politicians, and has meant unanimity in voting. Political control being centered in the rural areas of the Southern states, the "solid South" at the polls was the rural South, and the rural South was, primarily, the Black Belt.

The South today is no longer predominantly agricultural. The concerns and interests of the South are becoming more national and less sectional. Even on the question of segregation there is no really "solid" South. There are those who are for segregation and those who are against, and in between there are many levels of opinion.

That the South today is filled with tension and conflict no one doubts. All of the conflict is not of group against group; much of it is within the individual. The white Southerner has always been a paradox: romantic and pragmatic, devoted to the science of the possible, but taking delight in the impossible, he is accurately described as a hard-headed sentimentalist; he has been willing to fight at the drop of a hat, but often as willing to fight for others as for himself; because of his pride, nursed in memories of defeat and extreme poverty, he is driven to prove the South is better than the rest of the nation, and yet he is anguished when he looks bad to the rest of the world; he is hospitable and yet clannish; he is an individualist rebelling against regimentation, but often also a conformist insisting on unanimous protest.*

There are also the Negro citizens of the South, usually not counted when speaking of the mythical "solid South." Their influence increases with their voting strength and their economic buying power. There is not only a "New South;" there is a new Negro in the South, vocal about his expectations and aspirations, depending on his own leadership, supported by and speaking for his own people, aware of his rights as a citizen.

27. What have church groups said?

The churches have worked over a long period of time to mobilize religious opinion against racial prejudice and discrimination. They have been prompt to commend the Supreme Court decision against segregation in public facilities. The churches' own words express best

* This paragraph was paraphrased freely from Merrimon Cunninggim, "The Southern Temper," *The Perkins School of Theology Journal*, Spring, 1958.

the nature of their concern and their teaching. Nearly every denomination has spoken on the subject, and from many statements the following have been selected, not because they are the strongest, but because they are representative of the religious instruction which all the churches offer. No leading church—Jewish, Greek Orthodox, Protestant, Roman Catholic—today supports segregation in principle or practice.

A. In June, 1954, the following Resolution was adopted by the Southern Baptist Convention:

> In the light of the recent decision handed down by the Supreme Court of our nation declaring segregation of the races to be unconstitutional, and in view of the position of this Convention in adhering to the basic moral principles of our religion as they apply in race relations, we recommend:
>
> 1. That we recognize the fact that this Supreme Court decision is in harmony with the constitutional guarantee of equal freedom to all citizens, and with the Christian principles of equal justice and love for all men.
>
> 2. That we commend the Supreme Court for deferring the application of the principle both as to time and procedure until the nation shall have had time to work out methods by which transition from the present practice may be effected.
>
> 3. That we urge our people and all Christians to conduct themselves in this period of adjustment in the spirit of Christ; that we pray that God may guide us in our thinking and our attitudes to the end that we may help and not hinder the progress of justice and brotherly love; that we may exercise patience and good will in the discussions that must take place, and give a good testimony to the meaning of Christian faith and discipleship.
>
> 4. That we express our belief in the public school system of our nation as one of the greatest factors in American history for the maintenance of democracy and our common culture, and we express the hope that in the working out of necessary adjustments, its place in our educational program shall not be impaired.
>
> 5. That we urge Christian statesmen and leaders in our churches to use their leadership in positive thought and planning to the end that this crisis in our national history shall not be made the occasion for new and bitter prejudices, but a movement toward a united nation embodying and proclaiming a democracy that will commend freedom to all peoples.

B. The National Baptist Convention, U.S.A., adopted a statement which read in part as follows:

> For many years Negroes have been puzzled as to the attitude they should adopt regarding the sincerity of the American claim of the policy of "Justice to all and special privilege to none."
>
> When, however, the Supreme Court issued her memorable decision outlawing segregation in the public schools, the race took heart and reorganized her thinking with regards to America being in truth "The Land of the Free and the Home of the Brave."
>
> Negroes love America and entertain no bitterness toward her despite the vicious wrongs some commit against them in certain sections of the country. They have too long agonized in prayer for her security. They have given too freely of their blood to vouchsafe her institutions—not to love her with undy-

ing devotion. They believe the Supreme Court on May 17, 1954, justified the faith, the hope and the love they exercise toward this country.

C. At its International Convention, October, 1957, the Disciples of Christ adopted this resolution:

> . . . Be it Resolved: First—that we urge and encourage all ministers and churches of our communion to be willing to bear any cross of persecution or reprisal brought upon them by their fearless witness to the rights of all people, regardless of race or ethnic origin, to liberty, equality, justice and human dignity, and to the true nature of the Church and the proclamation of the Gospel of Christ without fear or favor: . . .

D. The General Assembly of the Presbyterian Church, U. S. [Southern] resolved on June 1, 1954:

> . . . Since segregation of the white and Negro people continues to diminish it is time to determine the church's relationship to this trend. This state of flux is due to two dynamic forces at work, the Federal Constitution and the Christian conscience, the one legal and the other spiritual; the one finding expression in statutes and court decisions, and the other in personal conduct, in the voice and policies of the church. If it be judged that segregation is not merely the separation of two peoples, but the subordination of one people to another, we can, on good evidence, observe that the courts have shown more sympathy toward the Negro than has the church. The church would then find itself in the embarrassing position of having to adjust its sense of morality to measure up to the morals of the state. This would belie its pristine nature. Our Christ was and still is ahead of the times; the customs, traditions, and the laws of it. The church must strive to keep apace of its Master or become bereft of His spirit.

E. From the pastoral letter of Protestant Episcopal Bishops, October 17, 1958:

> . . . We must remember that the majority of mankind belongs to the colored races, and that the American racial problem is discussed the world over. Much of the good will which early missionaries gained has been lost. Much of the good will which our nation once enjoyed has been lost. If America continues to lose friends as others become convinced that we do not mean what we say about justice and equality, the reason will be obvious. The judgments of the Lord are true and righteous altogether. These judgments are the plain cost we pay in God's universe for not practicing what we preach, and for not being ready to grant to others the opportunity and equality we cherish for ourselves.
>
> * * *
>
> We need to give a larger place to the liberating, manly, and noble quality of reason. Of course we share with the rest of God's creation in the emotional drives of life—fear, rage and hunger. But part of what the Bible means when it speaks of our being made in God's image is that we can reason. By the calm, impersonal unifying process of shared thought we are set free from the control of passion to find one another and the commonwealth of humanity. If we carefully search for truth, we will be led together to God, who is the source of all truth.

F. The Catholic Bishops of the U. S., on November 14, 1958, issued a statement:

. . . Our Christian faith is of its nature universal. It knows not the distinctions of race, color, or nationhood. The missionaries of the church have spread throughout the world, visiting with equal impartiality nations such as China and India, whose ancient cultures antedate the coming of the Saviour, and the primitive tribes of the Americas. The love of Christ and the love of the Christian knows no bounds. In the words of Pope Pius XII, addressed to American Negro publishers 12 years ago, "All men are brothered in Jesus Christ; for He, through God, became also man, became a member of the human family, a brother of all."

G. On November 13, 1958, The Methodist Council of Bishops issued a statement:

"The decisions of the Supreme Court of the United States relative to segregation make necessary far-reaching and often difficult community adjustments throughout the nation. We call upon our people to effect these adjustments in all good faith, with brotherliness and patience. In doing this, all racial groups must be willing to admit their imperfections and seek to correct them. Let these things, however, be done in love, lest the cause of Christ suffer at our hands." [Quoted from the general conference resolution of 1956.]

We reaffirm our support of the Supreme Court in the decisions relative to segregation in the public-school system, and earnestly urge all our people to accept the rulings of the courts in good faith. We seek with the guidance of the Holy Spirit to create that kind of social climate which will work toward the elimination of friction between any and all racial groups and ultimately achieve the realization of Christian brotherhood in all community relationships—North and South and everywhere in the world.

28. Who are the "extremists?"

The extremists are those who advocate or employ intimidation or violence to deny the rights of others. No one who advocates compliance in good faith with the law, or who seeks the vindication of rights through peaceful means, can be validly called an extremist.

29. How does the racial issue affect the international relations of the United States?

Here are four statements which make clear the answer:

A. As is true in so many other aspects of our national policy today, the world situation is requiring us to do the things which we should do anyway. No one but a cynic would argue that we should suddenly become interested in equal rights for Negroes merely because our progaganda position in the world would be helped by such progress.

Nevertheless, it remains more true today than it was in 1947, when one of our distinguished former Secretaries of State, Henry L. Stimson wrote:

"No private program and no public policy, in any section of our national life, can now escape from the compelling fact that if it is not framed with reference to the world, it is framed with perfect futility." *Chester Bowles, Member of Congress and former Ambassador to India.*

B. Reports by the foreign press, for instance, that Negroes are victimized in the United States, give substantial support to the communist line. They poison much of

the good will which our technical, economic and military aid to nonwhite populations was intended to foster. They are doubtless responsible for some of the steady progress which communism has made in the Middle East and in Southeast Asia including India and Laos . . . *from a University of Chicago study of the foreign press.*

C. The existence of the Negro problem in the United States robs the free world of the moral strength with which to speak for and represent the democratic-minded people of the world.

We of the West cannot go around the world condemning the Soviet Union and what it does unless we are clearly above attack on moral grounds ourselves. Africans feel very strongly about the Negro problem in the United States because we feel quite definitely a kinship with the Negro community in this country.

Insofar as we in Africa are in a fight for human rights and freedom, we cannot help but identify ourselves firmly with anyone anywhere in the world with the same problem. *Tom Mboya, African nationalist leader.*

D. We, the western white man who does believe that there exists an individual freedom above and beyond this mere equality of slavedom, must teach the nonwhite peoples this while there is yet a little time left. We, America, who are the strongest force opposing communism and monolithicism, must teach all other peoples, white and nonwhite, slave or (for a little while yet) still free. We, America, have the best chance to do this because we can do it here, at home, without needing to send costly freedom expeditions into alien and inimical places already convinced that there is no such thing as freedom and liberty and equality and peace for all people, or we would practice it at home.

The best chance and the easiest job, because our nonwhite minority is already on our side; we don't need to sell them on America and freedom because they are already sold; even when ignorant from inferior or no education, even despite the record and history of inequality, they still believe in our concepts of freedom and democracy. *William Faulkner.*

30. What can we do in our communities to help effect harmonious social change?

As individuals, we can insist upon open discussion of school desegregation and all other issues. We can see that true facts are provided as a basis of discussion.

As members of community and civic groups, we can support enlightened action by public officials and help to promote a healthy climate of public opinion.

As church members, we can recognize the special obligation of religious groups to contribute creatively to peaceful and orderly transition. Since segregation has been declared morally wrong by all the major religious bodies, it is the responsibility of every church member to examine his own beliefs and prejudices in the light of the Christian ideal.

We can affiliate ourselves with those groups in our state and community who are working actively for the American ideal of fairness and justice. We can advocate that channels of communication be kept open between the white and Negro communities, and that Negroes be represented on school boards and in all planning for desegregation.

Brown v. Topeka (First Decision), Supreme Court of the U. S., 1954.

Mr. Chief Justice Warren delivered the opinion of the Court.

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion.

In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate but equal" doctrine announced by this Court in *Plessy v. Ferguson*, 163 U. S. 537. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction. Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court.

Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time. In the South, the movement toward free common schools, supported by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost nonexistent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences as well as in the business and professional world. It is true that public school education at the time of the Amendment had advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the congressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; upgraded schools were common in rural areas; the school term was but three months a year in many states; and compulsory school attendance was virtually unknown. As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.

In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all state-imposed discriminations against the Negro race. The doctrine of "separate but equal" did not make its appearance in this Court until 1896 in the case of *Plessy v. Ferguson*, supra, involving not education but transportation. American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the "separate but equal" doctrine in the field of public education. *In Cumming v. County Board of Education*, 175

U. S. 528, and *Gong Lum v. Rice*, 275 U. S. 78, the validity of the doctrine itself was not challenged. In more recent cases, all on the graduate school level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337; *Sipuel v. Oklahoma*, 332 U. S. 631; *Sweatt v. Painter*, 339 U. S. 629; *McLaurin v. Oklahoma State Regents*, 339 U. S. 637. In none of these cases was it necessary to re-examine the doctrine to grant relief to the Negro plaintiff. And in *Sweatt v. Painter, supra*, the court expressly reserved decision on the question whether *Plessy v. Ferguson* should be held inapplicable to public education.

In the instant cases, that question is directly presented. Here unlike *Sweatt v. Painter*, there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible factors. Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In *Sweatt v. Painter, supra*, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In *McLaurin v. Oklahoma State Regents, supra*, the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible consideration: ". . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

> Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the education and mental development of negro children and to deprive them of some of the benefits they would receive in a racial [ly] integrated school system.

Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority. Any language in *Plessy v. Ferguson* contrary to this finding is rejected.

We conclude that in the field of public

education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question—the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument this Term. The Attorney General of the United States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as *amici curiae* upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954.

It is so ordered.

Brown v. Topeka (Second Decision), Supreme Court of the U.S., 1955.

Mr. Chief Justice Warren delivered the opinion of the Court.

These cases were decided on May 17, 1954. The opinions of that date, declaring the fundamental principle that racial discrimination in public education is unconstitutional, are incorporated herein by reference. All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle. There remains for consideration the manner in which relief is to be accorded.

Because these cases arose under different local conditions and their disposition will involve a variety of local problems, we requested further argument on the question of relief. In view of the nationwide importance of the decision, we invited the Attorney General of the United States and the Attorneys General of all states requiring or permitting racial discrimination in public education to present their views on that question. The parties, the United States, and the States of Florida, North Carolina, Arkansas, Oklahoma, Maryland, and Texas filed briefs and participated in the oral argument.

These presentations were informative and helpful to the Court in its consideration of the complexities arising from the transition to a system of public education freed of racial discrimination. The presentations also demonstrated that substantial steps to eliminate racial discrimination in public schools have already been taken, not only in some of the communities in which these cases arose, but in some of the states appearing as *amici curiae*, and in other states as well. Substantial progress has been made in the District of Columbia and in the communities in Kansas and Delaware involved in this litigation. The defendants in the cases coming to us from South Carolina and Virginia are awaiting the decision of this Court concerning relief.

Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.

In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and

reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases.

The judgments below, except that in the Delaware case, are accordingly reversed and the cases are remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases. The judgment in the Delaware case—ordering the immediate admission of the plaintiffs to schools previously attended only by white children—is affirmed on the basis of the principles stated in our May 17, 1954, opinion, but the case is remanded to the Supreme Court of Delaware for such further proceedings as that Court may deem necessary in light of this opinion.

It is so ordered.

Cooper v. Aaron, Supreme Court of the U. S., 1958.

As this case reaches us it raises questions of the highest importance to the maintenance of our federal system of government. It necessarily involves a claim by the Governor and Legislature of a State that there is no duty on state officials to obey federal court orders resting on this Court's considered interpretation of the United States Constitution. Specifically it involves actions by the Governor and Legislature of Arkansas upon the premise that they are not bound by our holding in *Brown v. Board of Education*, 347 U. S. 483, 74 S.Ct. 686, 98 L.Ed. 873. That holding was that the Fourteenth Amendment forbids States to use their governmental powers to bar children on racial grounds from attending schools where there is state participation through any arrangement, management, funds or property. We are urged to uphold a suspension of the Little Rock School Board's plan to do away with segregated public schools in Little Rock until state laws and efforts to upset and nullify our holding in *Brown v. Board of Education* have been further challenged and tested in the courts. We reject these contentions.

* * *

One may well sympathize with the position of the Board in the face of the frustrating conditions which have confronted it, but, regardless of the Board's good faith, the actions of the other state agencies responsible for those conditions compel us to reject the Board's legal position. Had Central High School been under the direct management of

the State itself, it could hardly be suggested that those immediately in charge of the school should be heard to assert their own good faith as a legal excuse for delay in implementing the constitutional rights of these respondents, when vindication of those rights was rendered difficult or impossible by the actions of other state officials. The situation here is in no different posture because the members of the School Board and the Superintendent of Schools are local officials; from the point of view of the Fourteenth Amendment, they stand in this litigation as the agents of the State.

The constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and Legislature. As this Court said some 41 years ago in a unanimous opinion in a case involving another aspect of racial segregation: "It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the federal Constitution." *Buchanan v. Warley*, 245 U. S. 60, 81, 38 S.Ct. 16, 20, 62 L.Ed. 149. Thus law and order are not here to be preserved by depriving the Negro children of their constitutional rights. The record before us clearly establishes that the growth of the Board's difficulties to a magnitude beyond its unaided power to control is the product of state action. Those difficulties, as counsel for the Board forthrightly conceded on the oral argument in this Court, can also be brought under control by state action.

The controlling legal principles are plain. The command of the Fourteenth Amendment is that no "State" shall deny to any person within its jurisdiction the equal protection of the laws. "A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government * * * denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning." *Ex parte Virginia*, 100 U.S. 339, 347, 25 L.Ed. 676. Thus the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, see *Virginia v. Rives*, 100 U.S. 313, 25 L.Ed. 667; *Com. of Pennsylvania v. Board of Directors of City Trusts of Philadelphia*, 353 U.S. 230, 77 S.Ct. 806, 1 L.Ed. 2d 792; *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161; or whatever the guise in which it is taken, see *Derrington v. Plummer*, 5 Cir., 240 F.2d 922; *Department of Conservation and Development v. Tate*, 4 Cir., 231 F.2d 615. In short, the constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the Brown case can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted "ingeniously or ingenuously." *Smith v. Texas*, 311 U.S. 128, 132, 61 S.Ct. 164, 166, 85 L.Ed. 84.

What has been said, in the light of facts developed, is enough to dispose of the case. However, we should answer the premise of the actions of the Governor and Legislature that they are not bound by our holding in the Brown case. It is necessary only to recall some basic constitutional propositions which are settled doctrine.

Article VI of the Constitution makes the Constitution the "supreme Law of the Land." In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as "the fundamental and paramount law of the nation," declared in the notable case of *Marbury v. Madison*, 1 Cranch 137, 177, 2 L.Ed. 60, that "It is emphatically the province and duty of the judicial department to say what the law is." This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the Brown case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Every state legislator and

executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, No. 3 "to support this Constitution." Chief Justice Taney, speaking for a unanimous Court in 1859, said that this requirement reflected the framers' "anxiety to preserve it [the Constitution] in full force, in all its powers, and to guard against resistance to or evasion of its authority, on the part of a State. * * *" *Ableman v. Booth*, 21 How. 506, 524, 16 L.Ed. 169.

No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it. Chief Justice Marshall spoke for a unanimous Court in saying that: "If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery * * *." *United States v. Peters*, 5 Cranch 115, 136, 3 L.Ed. 53 A Governor who asserts a power to nullify a federal court order is similarly restrained. If he had such power, said Chief Justice Hughes, in 1932, also for a unanimous Court, "it is manifest that the fiat of a state Governor, and not the Constitution of the United States, would be the supreme law of the land; that the restrictions of the Federal Constitution upon the exercise of state power would be but impotent phrases * * * ." *Sterling v. Constantin*, 287 U.S. 378, 397-398, 53 S.Ct. 190, 195, 77 L.Ed. 375.

It is, of course, quite true that the responsibility for public education is primarily the concern of the States, but it is equally true that such responsibilities, like all other state activity, must be exercised consistently with federal constitutional requirements as they apply to state action. The Constitution created a government dedicated to equal justice under law. The Fourteenth Amendment embodied and emphasized that ideal. State support of segregated schools through any arrangement, management, funds, or property cannot be squared with the Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws. The right of a student not to be segregated on racial grounds in schools so maintained is indeed so fundamental and pervasive that it is embraced in the concept of due process of law. *Bolling v. Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884. The basic decision in Brown was unanimously reached by this Court only after the case had been briefed and twice argued and the issues had been given the most serious consideration. Since the first Brown opinion three new Justices have come to the Court. They are at one with the Justices still on the Court who participated in that basic decision as to its correctness, and that decision is now unanimously reaffirmed. The principles announced in that decision and the obedience of the States to them, according to the command of the Constitution, are indispensable for the protection of the freedoms guaranteed by our fundamental charter for all of us. Our constitutional ideal of equal justice under law is thus made a living truth.

James v. Almond, U.S. District Court, Eastern District, Virginia, 1959.

In this action for a preliminary and permanent injunction certain children of the white race, together with their parents, seek to restrain the enforcement, operation and execution of Sections 22-188.3, 22-188.4, 22-188.5, 22-188.6, 22-188.7, 22-188.8, 22-188.9, 22-188.10, 22-188.11, 22-188.12, 22-188.13, 22-188.14, and 22-188.15 of the Code of Virginia, 1950, as amended by the Acts of Assembly, Extra Session, 1956, and the Acts of Assembly, 1958. The statutes in question have been referred to by counsel as the "massive resistance" laws. As stated by defendants in their brief, the statutes are all a part of an overall effort or plan of the General Assembly to deal with the problems created by the decision of the United States Supreme Court in *Brown v. Board of Education*, 347 U.S. 483, and its impact upon the social, economic, and political conditions existing in Virginia as related to the children of this state.

The defendants are the Chief Executive and the Attorney General of the Commonwealth of Virginia, as well as the individual members of the School Board of the City of Norfolk, the Division Superintendent of Schools, and the School Board of the City of Norfolk, Virginia, a body corporate.

On September 27, 1958 . . . the Board assigned the seventeen Negro children to the schools in controversy, and thereupon the Governor of Virginia, purporting to act under No. 22-185.5 of the Code of Virginia, issued a proclamation declaring the affected schools closed; divesting the School Board of all authority, power and control over said schools; and assuming as Governor complete authority, power, and control over the schools, its principals, teachers, employees, and pupils enrolled or ordered to be enrolled therein, including the infant plaintiffs, each of whom is a white child enrolled or ordered to be enrolled in one of said schools.

As the opening of all public schools in the City of Norfolk had been postponed by action of the School Board until September 29, 1958, in order to obtain a final ruling from the United States Court of Appeals for the Fourth Circuit, the six schools referred to have never opened for the 1958-59 school year. Since September 27, 1958, the only activity permitted has been such as was specifically authorized by the Governor. Approximately 42,000 pupils were enrolled in all public schools in Norfolk prior to the enforcement of the school-closing laws which are the subject of this litigation. Of this number, an estimated 9,900 would have been enrolled in the six schools. No high schools heretofore attended solely by white children are in operation. Three of the four junior high schools formerly attended solely by white children are closed, and the only junior high school in this class remaining open is operating on a segregated basis in excess of its normal capacity. The schools previously and now attended only by Negro children are in full operation, also on a segregated basis, but the seventeen Negro children are not in attendance at any school.

What has happened to the 9,900 white children in the interim? Between 4,200 and 4,500 children are enrolled in various tutoring groups being held in private homes and churches, where they are receiving stopgap instruction in certain basic courses under the guidance of teachers; ninety percent of whom are public school teachers under contract to teach in the six closed schools and whose contractual obligations have purportedly been assumed by the State pursuant to No. 22-188.14 of the Code of Virginia, 1950, as amended. There have been 1,621 children officially transferred to other recognized schools, public or private; but the number leaving the state is presently unknown. ... proximately 948 children have been tr ferred to the public schools of South Norf a city contiguous to Norfolk, where the majority attend a session beginning at 4 P each day. It is estimated that between 2, and 3,000 children are receiving no educa or tutoring of any nature.

The plight of the school children and teaching personnel who would have been attendance at the six schools has been a quately described as "tragic." Children would be in their last year of high school at a loss as to what to do, and those who planned to attend college are completely f trated. The value of a high school diplom freely recognized, even as to such child who may be admitted to college on exami tion and without a diploma. Children having reached the twelfth grade are equ uncertain as to their future. While the rec does not reflect the reaction of the child attending other public schools in Norfolk in operation, it is a proper assumption tha least some of these students and their par must realize that their schools could be clo at any moment.

In this state of confusion the teachers un contract in the closed schools have endeavo to assist as a temporary measure. But t likewise must look to the future. The mo is at a low ebb; they do not know when ever, they will resume the noble professio educating the youth of Virginia, to wh they have dedicated their lives. While t contracts are apparently protected until J 30, 1959, they have no assurance that t services will be renewed for the next ceeding school year. Aside from the finan remuneration they receive, the teachers exp the desire to teach in public school— merely to assist in some private tuto group. The testimony points to a feeling unrest and insecurity among all of the te ers; they are here today, but they will doubtedly be gone tomorrow unless they assured with respect to the future. If teachers leave for a more certain field endeavor, the public of Norfolk will lose even if we were to assume that private tu ing groups would and could continue, teaching source of supply would be so ited that only a scattered number of child could receive this type of education.

In this setting we approach the stat under consideration.

We are not unmindful of the difficulties confronting Virginia and other Southern States following the Brown decision of May 17, 1954. It is not for us to pass upon the wisdom of state legislation, but it is our duty to apply constitutional principles in accordance with the decisions of the United States Supreme Court, and when state legislation conflicts with those constitutional principles, state legislation must yield. Irrespective of what may be said by those in public life, we are gratified to note that counsel for the defendants, including the Attorney General of Virginia, concede that the decisions of the United States Supreme Court are not only binding upon this court, but also constitute the law of the land.

* * *

Tested by these principles we arrive at the inescapable conclusion that the Commonwealth of Virginia, having accepted and assumed the responsibility of maintaining and operating public schools, cannot act through one of its officers to close one or more public schools in the state solely by reason of the assignment to, or enrollment or presence in, that public school of children of different races or colors, and, at the same time, keep other public schools throughout the state open on a segregated basis. The "equal protection" afforded to all citizens and taxpayers is lacking in such a situation. While the State of Virginia, directly or indirectly, maintains and operates a school system with the use of public funds, or participates by arrangement or otherwise in the management of such a school system, no one public school or grade in Virginia may be closed to avoid the effect of the law of the land as interpreted by the Supreme Court, while the state permits other public schools or grades to remain open at the expense of the taxpayers. In so holding we have considered only the Constitution of the United States as it is unnecessary, in our opinion, to pass upon the specific provisions of the Constitution of Virginia which deal directly with the free public school system of the state. We do not suggest that, aside from the Constitution of Virginia, the state must maintain a public school system. That is a matter for state determination. We merely point out that the closing of a public school, or grade therein, for the reasons heretofore assigned violates the right of a citizen to equal protection of the laws and, as to any child willing to attend a school with a member or members of the opposite race, such a school-closing is a deprivation of due process of law. It follows, therefore, that the defendants must be permanently enjoined from enforcing or attempting to enforce the statutes in question as the same may apply to the public schools of the City of Norfolk.

* * *

In the event the State of Virginia withdraws from the business of educating its children, and the local governing bodies assume this responsibility, the same principles with respect to equal protection of laws would be controlling as to that particular county or city. While the county or city, directly or indirectly, maintains and operates a school system with the use of public funds, or participates by arrangement or otherwise in the management of such a school system, no one public school or grade in the county or city may be closed to avoid the effect of the law of the land while other public schools or grades remain open at the expense of the taxpayers. Such schemes or devices looking to the cutoff of funds for schools or grades affected by the mixing of races, or the closing or elimination of specific grades in such schools, are evasive tactics which have no standing under the law.

* * *

We are told that, because the schools are closed to *all alike*, both white and colored, there is no discrimination and hence there is no violation of the Fourteenth Amendment. This premise is totally unsound. The discrimination here complained of is the denial of the right of white children to attend public schools which are closed by action of the Governor pursuant to an unconstitutional law enacted by the General Assembly of Virginia, while other white children living in the same state, and within the same political subdivision, are enjoying the educational opportunities afforded them at the expense of all taxpayers, including the parents of the white children locked out of the six schools. We need hardly discuss the factor of race to arrive at the conclusion that this is not equal protection of laws.

For Further Reading

(Readings marked with asterisk are available from the Southern Regiona Council, either free or at a small charge, for as long as supplies last.

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7.	*Sidney Hook, *Democracy and Desegregation* (available from the T ment Institute, 7 East 15th, N. Y. 3, N. Y.).
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*Nat Griswold, "Arkansans Organize for Public Schools," *New South,* June, 1959.
*Paul Rilling, "Virginians Support Public Schools," *New South,* July-August, 1959.
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13. (a) *Herbert Wey and John Corey, *Action Patterns in School Desegregation.*

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See also 16(a), (b), (c), (d); 27(a).

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26. (a) *LeRoy Collins, *The South and the Nation.*
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*Marge Manderson, "Solid South . . . Or Else," *New South*, April, 1960.
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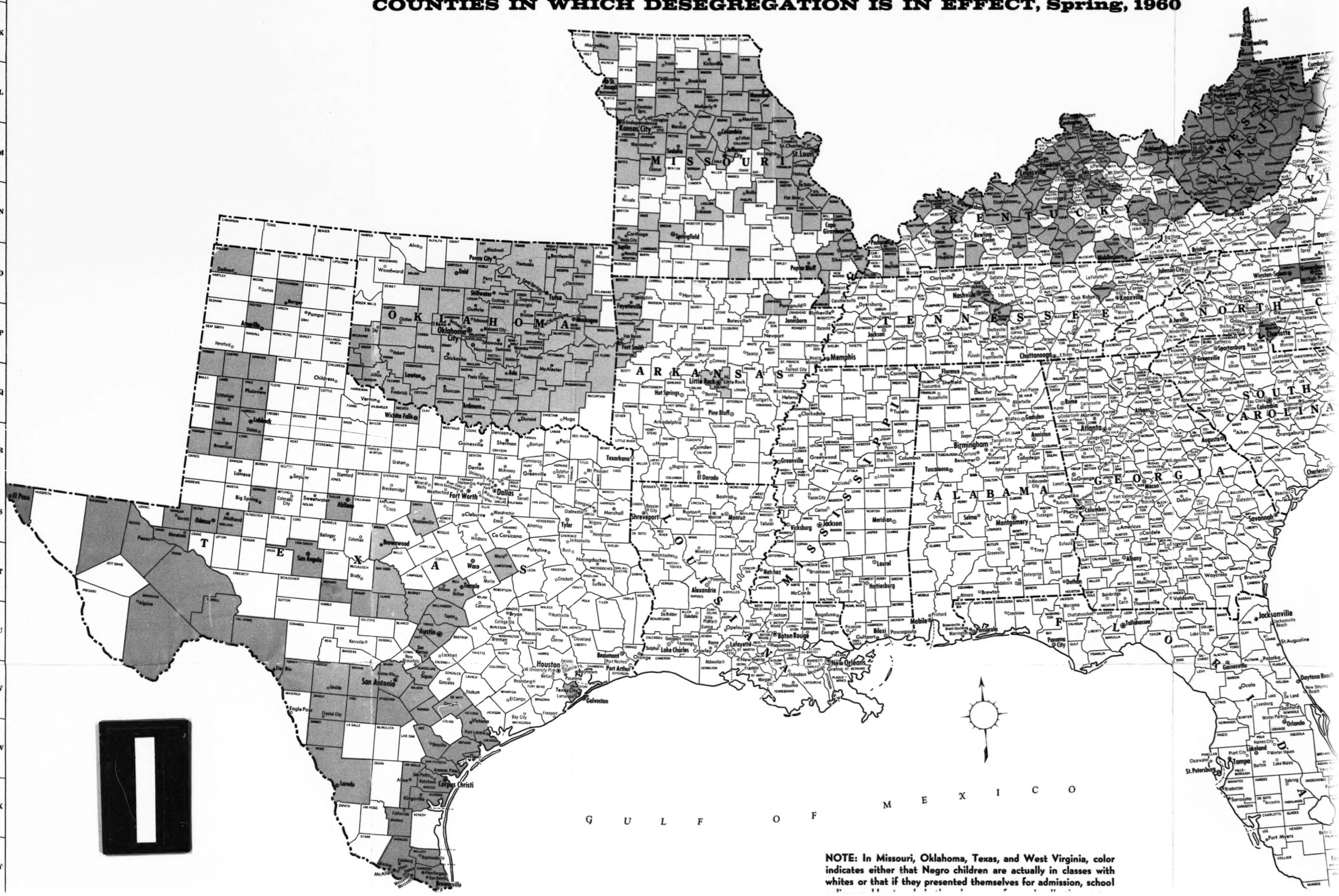

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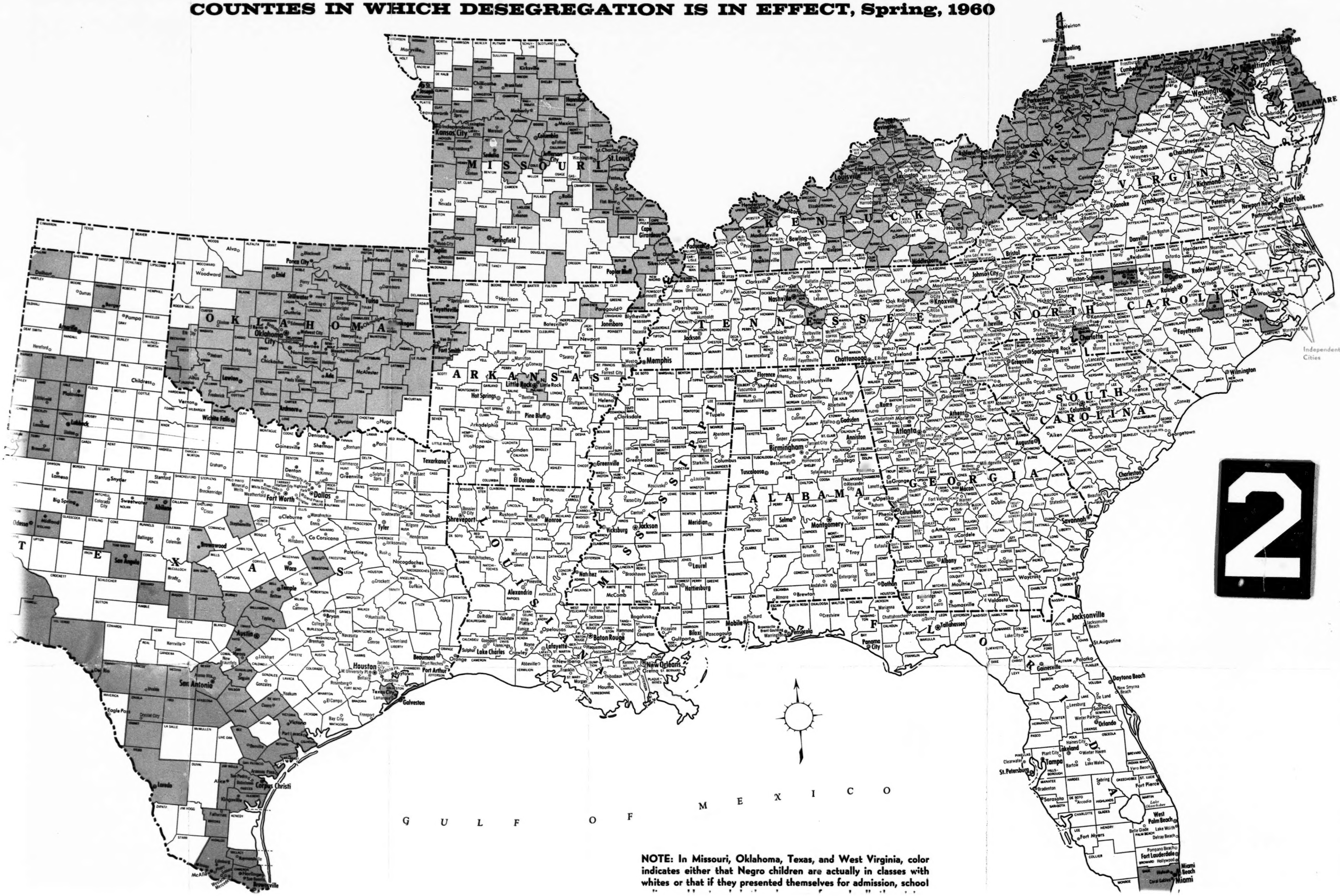

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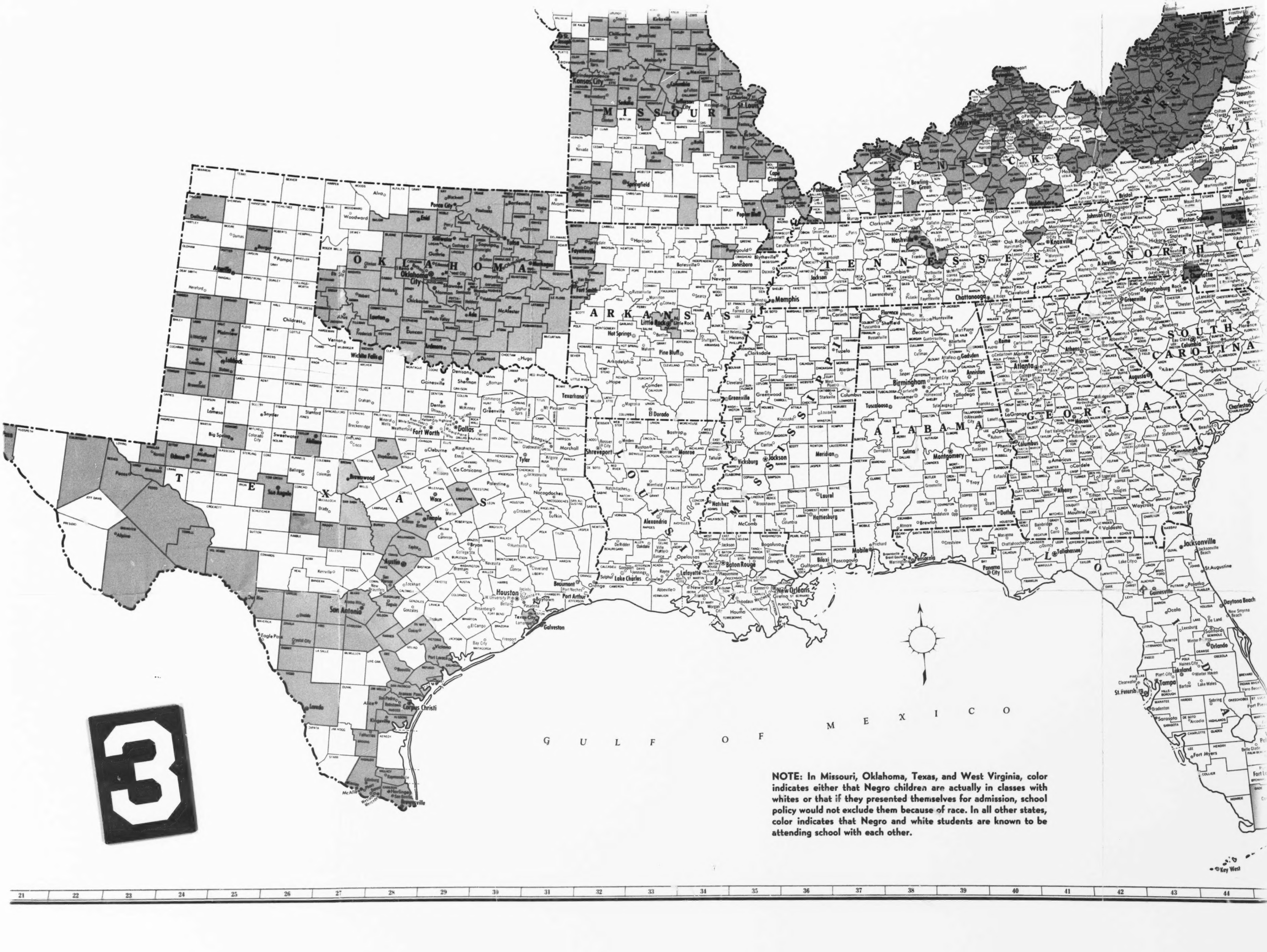
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GULF OF MEXICO
MISSOURI
OKLAHOMA
ARKANSAS
TENNESSEE
KENTUCKY
LOUISIANA
MISSISSIPPI
ALABAMA
GEORGIA
SOUTH CAROLINA
NORTH CAROLINA
TEXAS
Kansas City
St. Louis
Springfield
Oklahoma City
Tulsa
Fort Smith
Little Rock
Memphis
Nashville
Knoxville
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Del Rio
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Cleburne
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Denton
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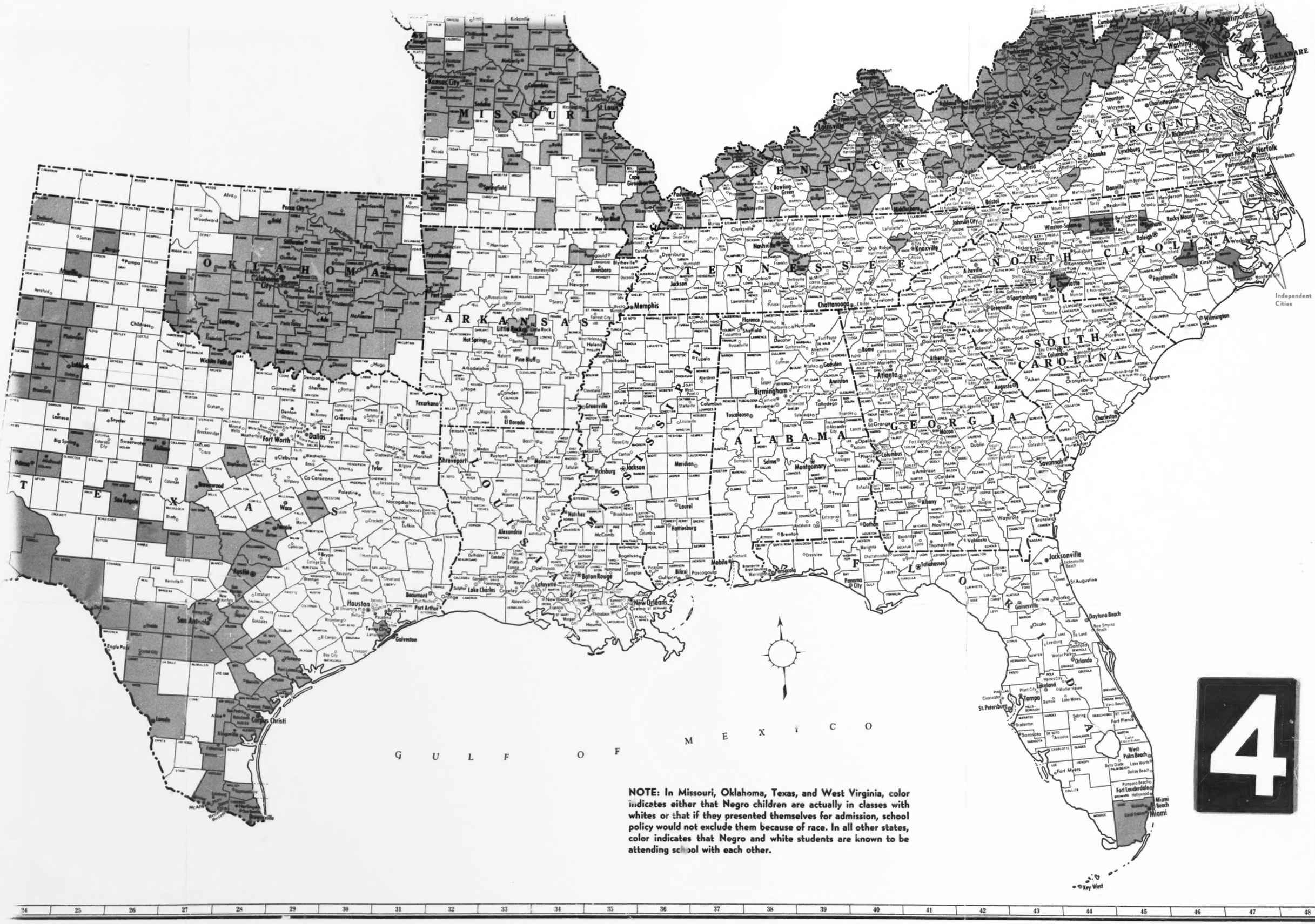
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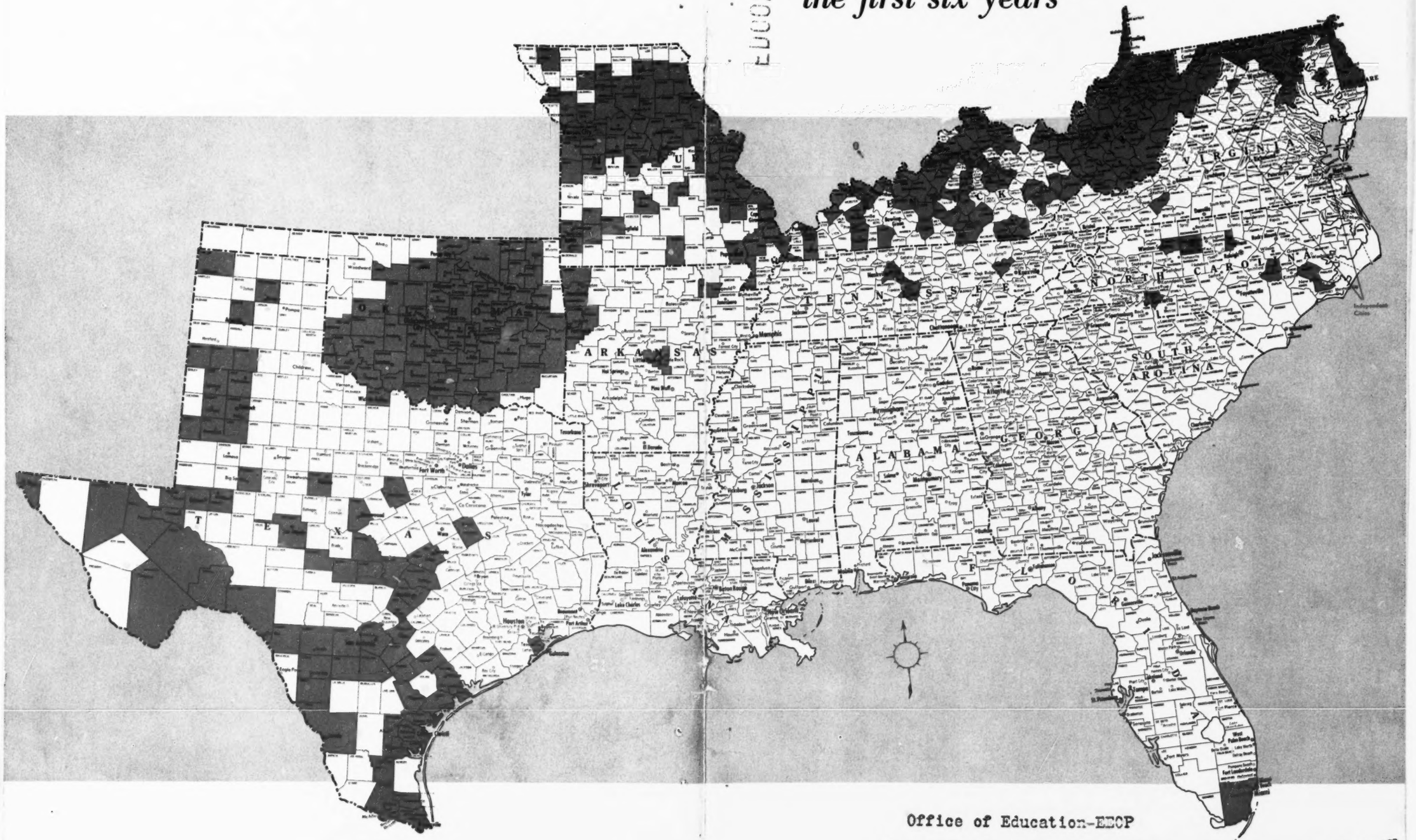
SCHOOL DESEGREGATION:

the first six years



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